IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1212 OF 2006
IN
SECOND APPEAL NO.446 OF 1997

Shri Hari Govind Porje,
since deceased, through his LRs
1 Smt.Kamlabai Hari Porje and ors. Applicants
Vs
Shri Balkrishna Gajiram Hullule,
since deceased through his LRs
1.Smt Vithabai Balkrishna Hululay
and ors. Respondents.

Mr S.G.Surana with Smt P.P.Jakhade, for the applicants
Mr H.E.Palwe, for respondent nos.1 to 5.

CORAM : D.B.BHOSALE,J.
DATE : 15.11.2006

PC:

1. Heard the learned counsel for the parties. Leave to amend. Amendment to be carried out forthwith.

2. By this civil application, the applicants are seeking to set aside the order of dismissal dated 1.8.2003 and restoration of the appeal to file. In paragraph 3 of the application, the applicants have stated that they had engaged the lawyer to look after their appeal. However, the advocate on record on the date and time when the matter was called out, was busy before some other court and hence he could not attend the matter, and as a result of which the order dated 1.8.2003 came to be passed. It appears that the advocate on record for the applicants did not notice the

said order until the applicants get in touch with him. The applicants contacted the advocate only when they received the notice in execution proceedings. It is now well settled that a litigant cannot be made to suffer for the lapse or negligence of the advocate. The applicants were not expected to pursue the matter once having engaged the services of the advocate to conduct their appeal in the High Court. Keeping that in view and considering the overall facts and circumstances of the case and the reasons stated in the application, I am satisfied that the cause shown by the applicants is sufficient to condone the delay in filing this application. Hence, the application is allowed in terms of prayer clause (b).

2. Insofar as possession of the suit land is concerned, parties are directed to maintain status-quo till the disposal of the appeal.

3. Office is directed to place the Second Appeal for final hearing in the week commencing from 26.11.2006.

4. The civil application is disposed of.

(D.B.BHOSALE,J.)